

BELL TELEPHONE COMPANY OF NEVADA

IBLA 82-47

Decided March 25, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, imposing reappraised annual rental charges for communication site right-of-way. N-049536.

Set aside and remanded.

1. Federal Land Policy and Management Act of 1976:
Rights-of-Way--Rights-of-Way: Act of March 4, 1911

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to a Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), right-of-way in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), the provision of 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA easement for a right-of-way was not issued pursuant to Title V of FLPMA.

2. Administrative Procedure: Hearings--Communication Sites--Hearings--Rights-of-Way: Act of March 4, 1911--Rules of Practice: Hearings

While the requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

APPEARANCES: Bonnie B. Packer, Esq., San Francisco, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Bell Telephone Company of Nevada has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated September 18, 1981, imposing reappraised annual rental charges for a communication site right-of-way. The right-of-way was granted to appellant pursuant to the Act of March 4, 1911, as amended, 43 U.S.C. § 961 (1976). ^{1/}

In the statement of reasons for appeal, appellant agreed that reappraisal was appropriate but questioned the method of appraisal. Appellant requested a formal hearing and consolidation with docket numbers IBLA 81-215, 81-217, 81-221, and 81-259.

[1, 2] This Board has already issued two decisions which dealt with the appeals represented by the other docket numbers referred to by appellant. American Telephone and Telegraph Co., 57 IBLA 215 (1981), and On Reconsideration, 59 IBLA 343 (1981). Those appeals were identical to the appeals presented here and this Board resolved the matter stating:

The regulations applicable to rental fees, 43 CFR 2803.1-2, in general apply to "[t]he holder of a right-of-way grant or temporary use permit * * *." 43 CFR 2803.1-2(a). As explained above, a right-of-way grant is an instrument issued pursuant to Title V of FLPMA [Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701-1872 (1976)]. Therefore, since the rights-of-way in question were issued prior to FLPMA, 43 CFR 2803.1-2(d) is not applicable, and appellant is entitled to the opportunity for a prior hearing pursuant to 43 CFR 2802.1-7(e) (1979). * * *

Id. at 57 IBLA 218.

However, the initial decision referred the cases to our Hearings Division for hearing by an Administrative Law Judge. Subsequently, when we reviewed the matter on reconsideration, we said, at 59 IBLA 344:

We did not intend in our decision to establish a standard procedure whereby a hearing before an Administrative Law Judge was required in each case involving reappraisal of the rental fee for a pre-FLPMA right-of-way. At the time we were not unmindful of the fact that more informal procedures at the State Office level had also been endorsed by the Board in Circle L, Inc., 36 IBLA 260 (1978). However, we now believe that given the substantial

^{1/} This Act was repealed by section 706(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701-1782 (1976), effective Oct. 21, 1976, subject to valid existing rights.

number of similar cases arising, the more effective and efficient procedure would be to allow BLM to provide the "opportunity for a hearing" consistent with the basic procedural parameters set forth in Circle L, Inc., supra. Therefore, in the interest of treating all persons similarly situated in a fair and equitable manner, we modify those parts of our AT&T decision referring those cases to the Hearings Division for a hearing and remand those cases to BLM in order that BLM may afford those parties the "opportunity for a hearing."

Consequently, we also remand the present appeal to BLM for hearing. Consolidation of this appeal with those docket numbers dealt with in American Telephone and Telegraph Co. (On Reconsideration), supra, is discretionary with the Hearing Officer to whom the other Nevada cases have been assigned. 2/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the BLM decision reappraising appellant's right-of-way rental value is set aside and the matter remanded to the Nevada State Office, BLM, to provide an opportunity for a hearing prior to imposition of any revised rental charges.

Edward W. Stuebing
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

2/ The AT&T cases consolidated previously included a Wyoming right-of-way, W-21799 (Fontenelle), under IBLA 81-217.

